

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**MATTHEW JOHN FISHER, SETH
ROSENBERG, by his next friend Ira
Rosenberg, JAMES WALTON,**

Plaintiffs,

v.

**BOROUGH OF DOYLESTOWN,
POLICE OFFICER JEROLD BREDOW,
individually and as a police officer of the
Borough of Doylestown, ROBERT
WELCH,**

Defendants.

**CIVIL ACTION
No. 02-CV-4007**

JUDGE HERBERT J. HUTTON

PLAINTIFFS' PRETRIAL MEMORANDUM

I. INTRODUCTION

This action arises out of an incident on September 8, 2000, in which Defendant Police Officer Jerold Bredow, acting in concert and conspiracy with Defendant Robert Welch, effectuated the unlawful arrest of Plaintiffs Matthew John Fisher, Seth Rosenberg, and James Walton.¹ Plaintiffs' Complaint states two counts against Defendant Bredow: (1) a claim under 42 U.S.C. § 1983 that Defendant Bredow violated Plaintiffs' rights under the Fourth and Fourteenth Amendments to be free from unlawful arrest and detention, and malicious prosecution; and (2) state-law claims of assault, battery, false arrest, and malicious prosecution.

1 Plaintiffs have settled this matter with Defendant Welch. Plaintiffs had previously agreed to the dismissal of Defendant Borough of Doylestown. Defendant Bredow, therefore, is the sole remaining defendant in this action.

On October 28, 2003, the Court denied the summary judgment motion of Defendant Bredow, and, on December 10, 2003, the Court denied the summary judgment motion of Defendant Welch.

II. FACTS

The facts of this case are set forth in the Court's opinions denying the Defendants' summary judgment motions. In brief, Plaintiffs claim that they were arrested without legal cause or justification for a purported failure to leave a Starbucks Café in Doylestown when ordered to do so by Defendants Bredow and Welch. The deposition testimony established that Plaintiffs complied with an initial order that all non-Starbucks customers must leave, by having purchased a Starbucks beverage. The deposition testimony also established that, upon being ordered to leave by Defendants Bredow and Welch, regardless of their status as Starbucks customers, Plaintiffs complied with that order as well by departing the Starbucks premises. Notwithstanding their compliance with these orders, Plaintiffs were arrested and charged with failure of disorderly persons to disperse, 18 Pa. C.S.A. § 5502, and defiant trespass, 18 Pa. C.S.A. § 3503. All criminal proceedings were terminated favorably to the Plaintiffs.

III. DAMAGES

Plaintiffs each suffered damages in the nature of attorney's fees (between \$1,500.00 and \$2,000.00 per plaintiff), and pain and suffering.

IV. LEGAL ISSUES

Plaintiffs allege that their federal constitutional rights were violated, under 42 U.S.C. § 1983, under the Fourth and Fourteenth Amendments, by the following:

A. False Arrest. At no time did the Plaintiffs commit any unlawful act or any act that constituted a violation of the laws of the Commonwealth of Pennsylvania. Therefore, there was no probable cause to arrest Plaintiffs.

B. Malicious Prosecution. Defendant Bredow's conduct, including arresting Plaintiffs without probable cause, fabricating evidence and initiating criminal proceedings {which were terminated in plaintiff's favor), and testifying falsely against plaintiff, all without legal cause or justification, or basis in fact, was intentional and with malice.

C. Assault and Battery. Defendant Bredow's actions, including physically restraining and placing handcuffs Plaintiffs, without legal justification, caused and intended to cause a harmful and offensive contact, and/or the fear of same.

V. WITNESS LIST

1. Matthew Fisher
2. Seth Rosenberg
3. James Walton
4. Matthew St. Leger
5. Shannon Hays
6. Stephanie O'Boyle
7. Emily Rinker
8. Jerold Bredow
9. P/O Lance Carlen
10. Robert Welch

VI. EXHIBITS

1. Photographs of Starbucks premises.
2. "Voluntary Written Statement" of Robert Welch, dated 9/8/2000.
3. Letter of Robert Welch to Starbucks, dated July 12, 2000.

4. Doylestown Borough Police Department Investigation Report, dated 9/8/2000.
5. Criminal Complaint and Affidavit of Probable Cause against Matthew Fisher.
6. Juvenile Court petition against Seth Rosenberg.
7. Juvenile Court petition against James Walton.
8. Documents relating to defendant Bredow's dismissal from police department.

Plaintiffs object to Defendant Bredow's Exhibit List as to the following items:

Exhibit 1. (District Justice Hearing of Matthew Fisher), unless used for impeachment purposes.

Exhibit 2 through 4 (Plaintiffs' prior police contacts), are irrelevant, and are the subject of a pending Motion in Limine.

VII. ESTIMATED TIME OF TRIAL

Three to four days.

Respectfully submitted,

DATE: February 6, 2004

/s Michael C. Schwartz
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CERTIFICATE OF SERVICE

I, Michael C. Schwartz, hereby certify that, on February 6, 2004, the foregoing Plaintiffs' Pretrial Memorandum was filed electronically, and that copies of said filings were served via first-class U.S. Mail upon counsel for Defendant Bredow:

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/s Michael C. Schwartz